


Weighing the Balance

A REVIEW OF THE REGULATED

HEALTH PROFESSIONS ACT

REQUEST FOR SUBMISSIONS

**Health Professions
Regulatory Advisory Council**

 **Ontario**

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A Letter from the Chair of the Health Professions Regulatory Advisory Council

When the *Regulated Health Professions Act* (RHPA) came into effect on December 31st, 1993, it was widely regarded as "ground-breaking" legislation. Our task, some five years later, as a result of a ministerial referral, is to determine whether it has fulfilled its key objectives and provided a regulatory system that is—and will continue to be—effective, efficient, flexible and fair.

Undertaking a thorough review of the RHPA's effectiveness and impact is an ambitious task that cannot be completed without the assistance, advice and input of those who regulate, provide and receive health care services in Ontario. This includes individual patients/clients, advocacy groups, academic institutions, individual health professionals, associations of regulated and unregulated health professions, regulatory Colleges and members of the general public.

This publication is meant to provide you with a general understanding of *Regulated Health Professions Act* provisions concerning protection from harm, quality of care, accountability, efficiency, flexibility and fairness. Key questions concerning the effectiveness and impact of these provisions are listed in each section. Supplementary and more detailed questions, which may help you to frame your responses, are also included.

Although focus groups, public hearings and other methods will also be used to obtain feedback and frame recommendations for the Minister of Health's consideration, I cannot over-emphasize the importance of receiving your comments concerning any or all of these questions.

The process for making a submission is described in Appendix 4 of this publication and I urge you to read it carefully before doing so. Please note that all submissions must be received by October 29th, 1999 and that we are unable to accept submissions that are not accompanied by a signed copy of the Release Form that appears on the last page of the publication.

In the meantime, I wish to thank you, in advance, for your assistance and look forward to receiving your views on the significant issues raised in this publication.

Rob Alder, M.Med.Sc., Ph.D.

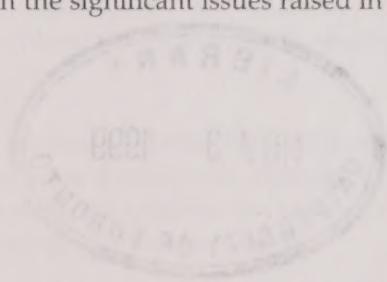
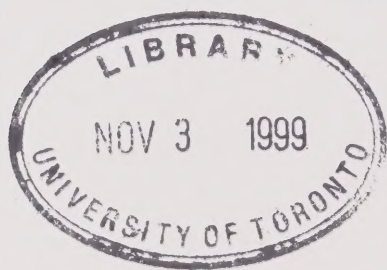


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Introduction

The *Regulated Health Professions Act* (RHPA), which came into force on December 31, 1993, provides a common framework for the regulation of those who work in Ontario's 23 regulated health professions. While the RHPA provides a common framework, there is in addition a series of profession-specific acts that specify such things as the scope of practice of each profession.

Under the provisions of the RHPA, the Minister of Health may refer any matter regarding the regulation of health professions to the *Health Professions Regulatory Advisory Council* (Advisory Council) for its review and recommendations. Under this authority, the Minister has asked the Advisory Council to review the effectiveness and impact of the RHPA and profession-specific Acts. This referral is called the Review Referral (Review).

The Review will determine whether the system's effectiveness and impacts—efficiency, flexibility and fairness—are appropriately balanced in relation to each other. The notion of balance is reflected in the title of this document—*Weighing the Balance*.

The Advisory Council's *Terms of Reference* for this Review Referral are detailed in Appendix 1.

Scope of the Review

As mentioned, the Advisory Council's Review will determine whether the RHPA has generated a regulatory system that is effective, efficient, flexible and fair.

The Act's *effectiveness* will be evaluated by determining the extent to which three of its key objectives have been met—protecting the public from harm, providing high quality care and making health professionals accountable for their actions.

The Review will assess the regulatory system's *efficiency* by determining whether the time and resources required to achieve the RHPA's purposes and principles are reasonable. It will also determine whether the administrative burden of regulation could be reduced without lessening the system's effectiveness, flexibility or fairness.

As the health care system evolves, it is essential that the RHPA remain flexible enough to address changes in the roles and utilization of health professionals. *Flexibility* will be evaluated by determining whether the regulatory system has been able to respond to emerging issues in a timely manner.

The Review will determine whether the regulatory system has promoted *fairness* by assessing the extent to which it has achieved the following objectives:

- respect for the rights and interests of patients/clients and health care professionals;
- equitable treatment of individual patients/clients and health professionals;
- equality among health professions; and
- patient/client access to health care professions of their choice.

Process for Obtaining Input and Comments

Sections I through VI of this publication contain a series of key and supplementary questions that relate to the concepts under review. Written responses to these questions will represent a significant portion of the input requested by the Advisory Council in this Review. Public hearings, focus groups and opinion polling will also be conducted as the Review progresses.

While these activities are underway, the Advisory Council will carry out separate statutory evaluations of the effectiveness of each College's patient relations and quality assurance programs and its procedures for handling complaints and discipline about sexual misconduct. The results of these evaluations will provide additional input for the Review.

When the Review is complete, the *Health Professions Regulatory Advisory Council* will provide the Minister of Health with its recommendations for refining the regulatory system and possible amendments to the RHPA.

About this Publication

Please note, the following materials contain descriptions of the Regulated Health Professions Act and related Acts and is not intended as a definitive legal exposition of the legislation. The reader is advised to consult the actual legislation for specific wording and terminology.

AN OVERVIEW OF THE REGULATED HEALTH PROFESSIONS ACT

In Ontario, more than 220,000 people belong to health professions governed by the *Regulated Health Professions Act* (RHPA).¹

This Act has been in effect since December 31, 1993 and applies to 23 health professions and the 21 Colleges that regulate them.² These ‘colleges’ are not teaching institutions. Their function is to set standards for one or more health professions and make sure they comply with the RHPA and related laws. Anyone who calls him or herself a regulated health professional must be a member of the College that regulates their profession.

The *Regulated Health Professions Act* provides a common framework for regulating health professions and has several underlying objectives:

- to protect the public from harm;
- to promote high quality care;
- to make regulated health professions accountable to the public;
- to give patient/client access to health care professions of their choice;
- to achieve equality by making all regulated health professions adhere to the same purposes and public interest principles; and
- to treat individual patients/clients and health professionals in an equitable manner.

The RHPA regime consists of the *Regulated Health Professions Act*, the *Health Professions Procedural Code* (Schedule 2), 21 profession-specific Acts, regulations under the Act and profession-specific Acts, and *Ministry of Health Appeal and Review Board Act*. Each of the profession-specific Acts spells out the nature of the specific profession. The *Nursing Act* is one example of such a law.

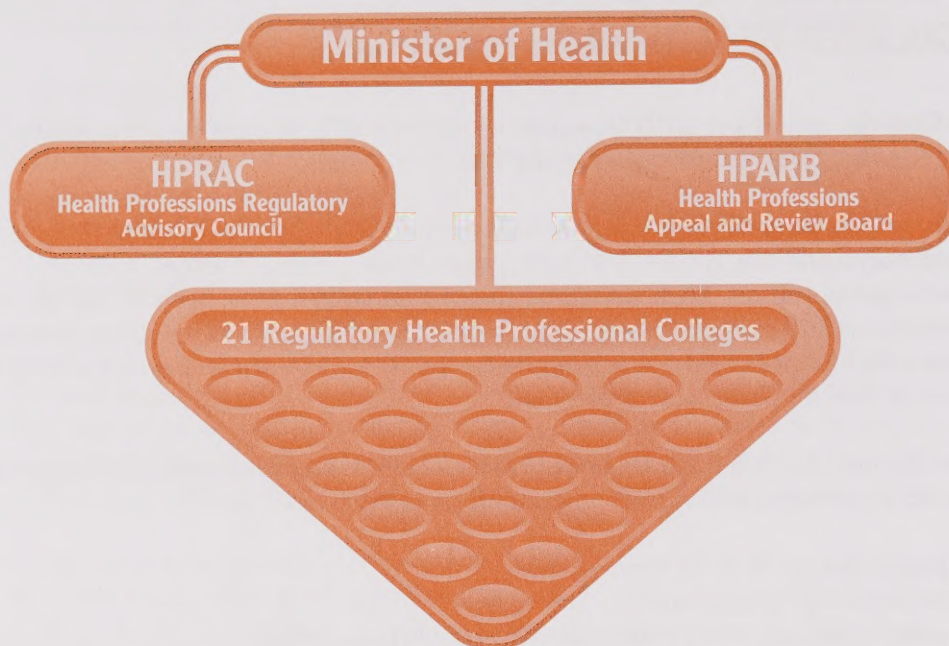
The RHPA assigns duties and responsibilities to:

- the Minister of Health;
- the Colleges that regulate health professions;
- the Health Professions Appeal and Review Board;³ and
- the Health Professions Regulatory Advisory Council.

¹ The *Regulated Health Professions Act* does not apply to all health professions. Some professions, like Naturopathy, are regulated under another Act. Some professions, like Traditional Chinese Medicine, remain unregulated. They may have voluntary bodies that set standards for their members but have limited ability to enforce such standards.

² A list of Colleges and the health professions they regulate is contained in Appendix 2. Note that the College of Audiologists and Speech Language Pathologists of Ontario and the College of Chiropractors of Ontario each regulate two different but related professions.

³ See also *Ministry of Health Appeal and Review Board Act* 1998.



The Minister of Health

The Minister of Health has a duty to make sure Colleges develop and maintain standards for the professions they regulate. The Minister has specific powers under the Regulated Health Professions Act. For example, the Minister may direct a College to:

- find out the state of practice in a particular area or institution;
- provide reports and information about its activities;
- make, change or repeal a regulation made under a health profession Act or the Drug and Pharmacies Act; and ⁴
- do anything the Minister believes should be done to carry out the intent of the RHPA, a specific health profession Act or the Drug and Pharmacies Regulation Act.

The Minister may also refer any matter concerning the regulation of health professions to the *Health Professions Regulatory Advisory Council* for its review and recommendations.

Health Regulatory Colleges

Each of Ontario's 21 Health Regulatory Colleges has a Council that acts as its Board of Directors. College Councils are expected to fulfill a number of responsibilities, including to:

- serve and protect the public's interest;
- regulate the practice of one or more health professions;

- set entry to practice standards;
- make sure their members comply with the Acts, regulations, codes and by-laws that apply to their profession;
- set standards of practice for quality care and services;
- promote the continuing competence of members; and
- develop codes of ethics for the professions they regulate.

Each College Council must also maintain and appoint members to the following committees:

- an Executive Committee;
- a Registration Committee;
- a Complaints Committee;
- a Discipline Committee;
- a Fitness to Practice Committee;
- a Quality Assurance Committee; and
- a Patient Relations Committee

College Councils are required to provide reports directly to the Minister of Health. As a further accountability measure, College Councils and most of their committees must have both professional and public members.⁵

The Health Professions Appeal and Review Board

This Board (formerly called the Health Professions Board) is a tribunal whose primary responsibility is to review certain decisions made by College complaints or registration committees when an appeal is made.

Complaint reviews are proceedings during which the Board considers

- the *Complaints Committee's* decision
- the *Complaints Committee's* record of investigation of the complaint; and
- any comments submitted orally or in writing by the person who made the complaint and the College member who is the subject of the complaint.

Either party may request the review and may have a lawyer represent them during the review.

The Board considers the adequacy of the investigation conducted and/or the reasonableness of the decision of the *Complaints Committee*.

When a review is completed, the Board may confirm all or part of the *Complaints Committee* decision, recommend further consideration by the committee, or require the committee to take other action within the committee's powers. The Board has no authority to award money or damages to an individual.

⁵ The number of professional and public members on each College Council is defined in the Act that deals with the specific profession regulated by the College, but College members are always in the majority and public members are usually just under one half of the total number of members. Public members are "lay persons" appointed by the government.

If a College's *Complaints Committee* does not dispose of a complaint within 120 days, the complainant may appeal the matter to the Board. The Board may direct the *Complaints Committee* to ensure that the complaint is disposed of. If the complaint is not disposed of within a further 60 days, the Board may investigate the complaint and has the powers of the *Complaints Committee* and of the Registrar for investigation of the matter. The Board may even appoint its own investigator. In addition, the Board has all other powers of the *Complaints Committee* or panel, including the ability to make orders and referrals.

The Board also conducts reviews or hearings of registration appeals. These reviews or hearings occur when an individual seeking membership in a College believes its *Registration Committee* has unfairly:

- refused to issue a certificate of registration;
- required the applicant to complete examinations or additional training before receiving a certificate of registration; or
- placed terms, conditions or limitations on the applicant's certificate of registration.

In these situations, applicants have two options. They may ask the Board to review the Registration Committee decision or to conduct a formal hearing. In the case of a review, the applicant and the College provide written submissions for the Board's consideration, but do not appear before it. A hearing, on the other hand, allows both parties to attend, provide sworn testimony and cross-examine one another.

Registration reviews and hearings frequently involve applicants trained and licensed to practice in other jurisdictions. Issues of educational equivalency, training, knowledge and skills often arise during these proceedings.

The Health Professions Regulatory Advisory Council

The *Health Professions Regulatory Advisory Council* (Advisory Council) is an "arms length" agency of the Ministry of Health and reports directly to the Minister of Health through its Chair. Its members are appointed by the government on the recommendation of the Minister of Health. Public servants, Crown employees and past or present members of a College or College Council may not sit on the Advisory Council.

The Advisory Council is responsible for giving the Minister advice about:

- which health professions should be regulated or no longer regulated;
- whether changes should be made to the RHPA or related Acts;
- whether proposed regulations under the RHPA and related Acts should be made;
- whether the Colleges' programs for complaints and discipline in sexual misconduct, quality assurance and patient relations are effective; and
- any other matter concerning the regulation of health professions that the Minister may wish to refer to the Advisory Council.

SECTION I – PROTECTION FROM HARM

About this Section

The main purpose of the *Regulated Health Professions Act* (RHPA) is to protect the public from harm. It does so by placing limits on what health professionals can do and by allowing Colleges to discipline members who ignore these limitations or conduct themselves in an inappropriate way.

Why does the government need to regulate health professionals? Most of us have good reason to trust and respect the professionals who provide our health care services.

However, consider this. The government also regulates those of us who drive. We have to prove that we understand the rules of the road and take a driving test before we get a license. Yet, as we all know, not all licensed drivers are good drivers. Even the best drivers sometimes make mistakes or take chances. If we get careless behind the wheel, we put other people at risk.

Health professionals can make mistakes too. Some of these mistakes can have serious consequences. A physical or emotional problem can affect a health professional's judgement or ability to treat patients/clients properly. Even simple things, such as giving an injection, can be dangerous if not done properly.

The *Regulated Health Professions Act* does not attempt to provide a comprehensive definition of "harm". Instead, the RHPA provides mechanisms that deal with situations in which lack of knowledge, mistakes, carelessness or incompetence have a potential for harm.

The following examples make this point clear. A surgeon makes a serious mistake during an operation. A massage therapist makes a sexual remark to a client. A dental hygienist performs a high-risk procedure, although not authorized to do so under the Act that governs his/her profession. A busy pharmacist dispenses a drug without warning a customer not to use it in combination with another medication. A College Registrar overlooks some weakness in an individual's experience or qualifications and gives them an unconditional certificate of registration to practice.

It is essential that everything possible be done to prevent these sorts of things from happening. That's why the *Regulated Health Professions Act* contains numerous provisions for protecting people from harm. Some of the more important provisions are discussed in this section.



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- Scope of Practice
- Use of Titles
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- Complaints and Discipline Procedures
- Incapacity Procedures
- Criteria for Regulation of a Health Profession
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Registration

In Ontario, anyone who wants to call him or herself a regulated health professional must first become a member of the College that governs that profession. If a College Registrar believes the person applying for membership does not meet the necessary standards, a *Registration Committee* must review the applicant's qualifications. Applicants have the right to make written submissions to the Committee or appear before it in person.

When the Committee reaches a decision, it may direct the Registrar to:

- issue, or refuse to issue, a certificate of registration;
- issue a certificate on the condition that the applicant passes certain exams or successfully completes additional training; or
- put specific limitations on the applicant's certificate of registration.

The primary purpose of this process is to prevent individuals who are not fully qualified from performing procedures that could seriously harm their patients/clients. It also gives Colleges an opportunity to determine whether an applicant has the necessary skills, knowledge and training.

Controlled Acts

It is vitally important to regulate health care activities that could seriously harm patients/clients. For this reason, the *Regulated Health Professions Act* (RHPA) lists thirteen procedures that, if not done correctly and by a competent person, have a high element of risk. These "controlled acts" include such things as communicating a diagnosis, giving injections, prescribing hearing aids and delivering babies. Using electricity or certain forms of "energy" to treat a patient/client or diagnose their condition are also examples of a "controlled act".⁶

The RHPA says that no one can perform a controlled act unless the law that applies to their own profession clearly allows them to do so.⁷ There are a number of exceptions to this rule, however. For example, a person who is training to become a member of a regulated health profession may perform controlled acts, but only under the direct supervision of a qualified professional. Also, the RHPA allows a member to delegate a controlled act in accordance with the regulations under the College-specific Act governing that member's profession.

Scope of Practice

Members of regulated health professions may not do anything that falls outside their scope of practice. The scope of practice is a description of the profession's activities and the controlled acts that its members are permitted to perform. While it may be obvious that an optometrist could not prescribe a hearing aid, there may be differences in authorized Acts within a profession. For example, some classes of nurses may be able to prescribe a drug while others cannot. These differences must be clearly described in the Acts and regulations that govern each profession.

⁶ A complete list of controlled acts is included in Appendix 3.

⁷ When a regulated profession receives the right to perform a "controlled act", the procedure is referred to as an "authorized act".

Use of Titles

The *Regulated Health Professions Act* forbids people from pretending to be members of a regulated health profession. Or, put another way, it ensures that the public can tell which professionals are qualified and held accountable to their Colleges. This means, for example, that people who provide massage services cannot call themselves “massage therapists” unless they are registered with the *College of Massage Therapists of Ontario*.

Use of the title “doctor”, any abbreviation of the word doctor, or the equivalent of the word doctor in another language is also restricted. In Ontario, the only health care providers who can use this title are physicians, psychologists, dentists, optometrists and chiropractors.

Patient Relations Programs

The *Regulated Health Professions Act* says that all Colleges must have a patient relations program that includes measures for preventing or dealing with sexual abuse of patients/clients by members. The purpose of such programs, as defined in the Act, is “to enhance relations between College members and patients” by educating College members and informing the public about what is, or is not, appropriate professional conduct.

Mandatory Reporting of Sexual Abuse

The *Regulated Health Professions Act* defines sexual abuse by a health professional as:

- sexual intercourse or other forms of physical relations with a patient/client;
- touching a patient/client in a sexual manner; or
- behaviour or remarks of a sexual nature to a patient/client.

Members of regulated health professions, and those who operate facilities in which regulated health professions practice, have a legal obligation to report any member who they believe has sexually abused a patient/client. College Registrars must receive these reports not more than 30 days after the alleged offence is committed, but even more quickly if there is reason to believe the member will continue to sexually abuse patients/clients. Colleges may impose a fine of up to \$25,000 for failure to report such abuse.

Complaints and Discipline Procedures

Under the provisions of the *Regulated Health Professions Act*, a panel appointed by the College’s *Complaints Committee* must conduct an investigation when anyone complains about a member’s conduct or actions.

Since people’s careers and reputations are at stake, as well as the safety of patients/clients, panels must be as fair as possible. *Complaints Committees* and panels must include at least one member who represents the public.

If a panel of a *Complaints Committee*, after conducting its investigation, believes a College member is incompetent or guilty of professional misconduct, it may do one of the following things:

- refer a specific allegation regarding the member's professional misconduct or incompetence to the College's *Discipline Committee*;
- refer the member to the College's *Executive Committee* for incapacity proceedings;
- refer the member to the *Quality Assurance Committee* if misconduct is related to behaviour or remarks of a sexual nature;
- require the member to appear before the *Complaints Committee* panel or another panel of the *Complaints Committee* to be cautioned; or
- take any action that it considers appropriate, so long as that action is not inconsistent with the *Regulated Health Professions Act*, the health professions act that governs the member's profession, or related regulations and by-laws.

Punishments for members who a College *Discipline Committee* finds guilty of professional misconduct range from a reprimand in less serious cases to permanent removal of their certificate of registration and right to practice. Colleges can also levy fines of up to \$35,000 for professional misconduct.

Some Colleges are now using alternate dispute resolution (ADR) processes to handle complaints. These Colleges believe that, in some situations, a less complex and time-consuming process can result in an outcome that satisfies all parties. It is noteworthy, however, that ADR settlements are not part of the public record. The *Regulated Health Professions Act* does not refer to alternative methods for settling disputes since this is a relatively new approach.

Incapacity Procedures

When the *Executive Committee* of a College receives a report from the Registrar that a member may be incapacitated, or receives a referral from a panel of the *Complaints Committee*, the *Executive Committee* may appoint a *Board of Inquiry* to look into whether a member is incapacitated.

If, after making inquiries, the *Board of Inquiry* has reasonable and probable grounds to believe that the member who is the subject of the inquiry is incapacitated, the board may require the member to submit to a physical or mental health examination by a health professional. The Board may also make an order directing the Registrar to suspend the member's certificate of registration until the member has submitted to such an examination.

After receiving the report of the *Board of Inquiry*, the *Executive Committee* may refer the matter to the *Fitness to Practice Committee*. The *Executive Committee* may, subject to certain restrictions in the Act, make an order directing the Registrar to suspend or impose certain conditions or limitations on a member's certificate of registration if it believes that the member is likely to expose patients to harm or injury.

If a panel of the *Fitness to Practice Committee* finds a member incapacitated, it can make an order:

1. directing the Registrar to revoke the member's certificate of registration;
2. directing the Registrar to suspend the member's certificate of registration; or
3. directing the Registrar to impose specified terms, conditions or limitations on the member's certificate of registration.

Criteria for Regulation of a Health Profession

The government may initiate regulation of a health profession if the Minister of Health believes it necessary to do so in order to promote the public's interest. In addition, a specific profession may seek regulation under the RHPA.

There could be several reasons for making such a request.⁹ For example, a profession may believe that regulation will ensure compliance with the profession's standard of practice. Whether initiated by the government or a profession, the Minister may refer the matter to the *Health Professions Regulatory Advisory Council* for advice.

In practice, the review process used by the Advisory Council provides all interested parties an opportunity to make submissions. The Advisory Council may also consult experts who have special knowledge about the application and the profession seeking regulation.

The Advisory Council uses several tests or 'criteria' to guide its thinking. One of these criteria relates to the risk of harm that is associated with the practice of that profession. A complete list of these criteria is provided in Section V-Flexibility (page 30).

Following its review, the Advisory Council provides advice to the Minister. The decision to regulate a new profession is made by Cabinet which then introduces new legislation.

Key Questions Concerning Protection of the Public from Harm

Protecting the public from harm is of utmost importance. Patients/clients and members of the general public cannot be sufficiently protected unless the *Regulated Health Professions Act* (RHPA) contains adequate provisions for achieving this outcome and regulatory Colleges put them into practical effect. Based on your understanding of these provisions and your own experience, please answer the following questions.

1.1

Does the RHPA include provisions that are strong enough and specific enough to provide regulatory Colleges with the tools they need to ensure that individual patients/clients and the general public are sufficiently protected from harm. If not, what additional provisions need to be included in the Act?

1.2

Which RHPA provisions have empowered Colleges to protect individual patients/clients and the public from harm? Which, if any, provisions are barriers to doing so? What improvements are needed?

⁹ Regulation of a health profession does not guarantee that provincial or private insurance will cover services. A different process is used to determine provincial payment (e.g. OHIP) for services.

1.3

In practice, have the Colleges been able to implement RHPA provisions for the protection of individual patients/clients and the public? If not, what difficulties have been encountered?

1.4

Have Colleges done a good job of implementing RHPA provisions for protecting individual patients/clients and the public from harm? If so, what kinds of initiatives or models of practice do you think have been particularly effective? If not, what general improvements in implementation are needed?

1.5

The issue of lack of referral of complaints to the Discipline Committee of Colleges has been raised. Are complaints being referred to discipline? If not, what are the reasons? Are there any implications for the protection of the public from harm?

1.6

Does the use of alternate dispute resolution (ADR) mechanisms have a deterrent effect and serve to protect the public from harm? If so, under what circumstances? Should ADR settlements be part of the public record? Should there be statutory provisions in the RHPA for Alternate Dispute Resolution?

Supplementary Questions

You do not have to answer all or any of the following specific questions. They are provided here mainly to stimulate your thoughts in responding to the above key questions.

1.a.

In the RHPA, the concept of harm takes on different meanings depending on the context. Has this caused problems in the implementation of the Act?

1.b.

Does the current list of controlled acts adequately cover the full range of procedures that can cause significant risk of harm? Should any procedures be added to or removed from the list of controlled acts?

1.c.

Are the title protection provisions sufficient to avoid confusion for the public? For example, do they adequately differentiate between regulated and unregulated practitioners?

1.d.

Are there sufficient provisions to support enforcement of the Scope of Practice regime, including controlled acts and title protection?

1.e.

Are the current provisions on delegation under the College-specific Acts sufficient to protect the public from harm? Does the lack of a definition and absence of any limit on delegation in the RHPA put the public at risk?

1.f.

Should the RHPA clearly define what constitutes a complaint? If so, how should “complaint” be defined?

1.g.

Should the RHPA include specific and comprehensive definitions of what constitutes physical and verbal patient abuse?

1.h.

Are the provisions that require health professionals to make mandatory reports of sexual misconduct by their colleagues adequate for the protection of the public from harm? If not, how can reporting of such cases be increased?

1.i.

Is professional incompetence or incapacity being reported by colleagues/employers to the professional's College Registrar? If not, how can reporting of such cases be increased?

1.j.

Are the provisions that require employers to report the termination of a health professional's employment due to incapacity and incompetence adequate for the protection of the public from harm?

1.k.

Are the provisions for complaints and discipline processes for misconduct other than that of a sexual nature adequate for the protection of the public from harm?

1.l.

Are mandatory reports and complaints being treated differently? If so, are there any implications for protection of the public from harm?

1.m.

Should the RHPA be more specific about the types of complaints that should be dealt with by Discipline Committees?

1.n.

Does the RHPA adequately provide for information to and education of the public? If not, what additional provisions are required?

1.o.

Should the RHPA specify more components for the Patient Relations program than just sexual abuse protection? Are the current statutory components of the Patient Relations programs sufficient? Are they implemented adequately?

1.p.

Should there be specific provisions for enforcement of the "risk of harm" clause in s.30(1) in the RHPA? ¹⁰

1.q.

Do health professions without controlled acts need to be regulated? If so, should they be regulated under the RHPA or through alternate forms of regulation?

1.r.

Are the criteria for regulation of a new health profession under the RHPA adequate to protect the public from harm? Are these criteria sufficient, excessive or appropriate as they are?

¹⁰ Section 30(1) states: "No person, other than a member treating or advising within the scope of practice of his profession shall treat or advise a person with respect to his or her health in circumstances in which it is reasonably foreseeable that serious physical harm may result from the treatment or advice or from an omission from them."

SECTION II – QUALITY OF CARE

About this Section

High quality care is difficult to measure or define because it is partly subjective. In other words, it may mean different things to different people at different times and in different circumstances. Perhaps that's why those who framed the Regulated Health Professions Act (RHPA) didn't attempt to define it. Instead, the RHPA gave regulatory Colleges the authority to:

- assess the skills, knowledge and judgement of prospective members,
- develop and maintain standards of practice;
- provide quality assurance programs;
- promote continuing competence among their members; and
- when necessary, assess a member's competence or fitness to practice.

For individuals working in a regulated health profession, quality of care involves such things as:

- keeping up to date with the latest developments in one's field;
- taking care to correctly diagnose or assess a patient's/client's condition;
- using the best available tools and treatment methods;
- prescribing or recommending the right drugs or substances and taking the time to warn patients/clients of possible side effects;
- exercising good judgement when dealing with difficult cases; and
- treating patients/clients with dignity, sensitivity and respect.

High quality care may be difficult to define, but the people of Ontario should expect and receive no less. This section deals with RHPA provisions that help achieve that outcome.

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College Purposes

The Regulated Health Professions Act (RHPA) lists purposes for Health Regulatory Colleges. Some of these are:

- to regulate the practice of the profession and to govern members in accordance with the RHPA and related regulations and by-laws;
- to develop and maintain qualification standards for their members;
- to develop and maintain programs and standards of practice which assure quality care;
- to develop and maintain standards of knowledge and skill and programs that promote continuing competence among their members;
- to develop and maintain standards of professional ethics for their members; and
- to exercise their rights under the RHPA.

The collective focus of these purposes is to maintain and improve the overall performance of health professionals and to achieve better outcomes for their patients/clients. This process begins with a careful evaluation of individuals who wish to enter a regulated health profession.

Entry to Practice Provisions

In Section 1, we described the procedure that's used to determine whether people who apply for College membership are fully qualified to practice their chosen profession. An important function of this screening process is to find out whether applicants have the skills, knowledge and judgement needed to give their patients high-quality care. Colleges may:

- refuse to register an applicant who does not meet College requirements;
- require those who do not meet their standards to take extra training or successfully complete certain exams before getting their certificate of registration; or
- put specific terms, conditions and limitations on an applicant's certificate of registration and monitor their progress on an ongoing basis.

Quality Assurance Programs

Team-based management programs such as Continuous Quality Improvement and Total Quality Management have been used in the manufacturing sector for many years, but are a recent development in the health care field. Ontario's leadership in this area is reflected in the Regulated Health Professions Act requirement that Colleges develop Quality Assurance programs for the professions they govern.

The Ministry of Health has developed guidelines for the development of Quality Assurance programs. These guidelines recommend that Colleges develop programs with components that:

- maintain and improve the competence of individual members;
- raise the collective performance of the profession by focusing on improved patient/client outcomes; and
- identify and provide ways of dealing with members who are incompetent.

These guidelines give Colleges the flexibility to develop Quality Assurance Programs that best meet the needs of the professions they regulate, but all such programs have several things in common. For example, Colleges have an obligation to promote and maintain their members' competence through continuing education programs. Educational institutions generally provide such programs, but members may also be required to successfully complete examinations that Colleges hold from time to time.

It's important for people in any trade or profession to improve their knowledge and skills, but it's vital that members of regulated health professions do so.

Quality Assurance Committees

Under the provisions of the *Regulated Health Professions Act*, each College must appoint a *Quality Assurance Committee*. These committees are responsible for conducting peer reviews relating to the quality of care provided by their fellow members.

Quality Assurance Committees have broad powers to investigate the conduct or standards of practice of College members. Their objective is not to punish health professionals but, whenever possible, to apply measures that improve the quality of care provided by individual members and the profession as a whole. When necessary, however, a *Quality Assurance Committee* can refer a case to the *Executive Committee*, which in turn may refer the case to the *Fitness to Practice or Discipline Committee*. Ultimately, the College Registrar may be directed to impose terms, conditions or limitations on the certificate of registration of any member:

- whose knowledge, skills and judgement have been assessed or reassessed and found to be unsatisfactory; or
- who has failed to participate in or successfully complete continuing education programs or remedial training specified by the Committee.

It's important to note that the College can and will remove such terms, conditions or limitations when it is satisfied they are no longer needed.

The *Regulated Health Professions Act* also authorizes *Quality Assurance Committees* to appoint "Assessors" who have the right to enter places where College members practice and inspect any accounts, reports and records relating to the care of patients/clients and the quality of such care.

The member whose premises and records have been inspected may be required to appear before the *Quality Assurance Committee*. They may also be required to take part in a process designed to test their competence and judgement.

Quality Assurance Committees also have a responsibility to deal with a complaint concerning alleged sexual misconduct referred to them by a panel of the

Complaints Committee. The *Quality Assurance Committee* can then compel the member to attend a program or to take part in continuing education. Education or counselling is appropriate in cases where the sexual abuse involved inappropriate behaviour or remarks. In these situations, the member needs to develop a better understanding of what is inside or outside the bounds of appropriate conduct or behaviour.

Evaluating Quality Assurance Programs

The *Regulated Health Professions Act* provides an independent and impartial process for judging the effectiveness of quality assurance programs. The *Health Professions Regulatory Advisory Council* has a statutory duty to review the effectiveness of each College's Quality Assurance programs and report its findings to the Minister. The Advisory Council's review is now underway.

Standards of Practice and Clinical Guidelines

Standards of practice clarify what members are expected to do and under what circumstances. Colleges may also establish clinical guidelines for the health professions they regulate. These guidelines describe accepted policies and procedures for dealing with specific situations. Their purpose is to help members make appropriate judgements and decisions when considering possible courses of action.

Competency Reviews

The vast majority of health professionals are knowledgeable, capable and committed to giving their patients/clients the best possible care. However, as in any other field, there are a few exceptions. Some individuals may simply have failed to keep up with developments in their field. The skills of others may have diminished over time. In the final analysis, however, incompetence is incompetence and it must be addressed.

The *Regulated Health Professions Act* says that a *Discipline Committee* panel must find a member incompetent if:

- the member's professional care of a patient/client displayed a lack of knowledge, skill or judgement; or
- the member demonstrated sufficient disregard for the welfare of the patient/client that the member is unfit to practice or should have restrictions placed on his or her practice.

If a *Discipline Committee* panel finds a member incompetent, it may make an order that directs the College Registrar to:

- revoke the member's certificate of registration; or
- suspend the member's certificate of registration; or
- impose specific terms, conditions and limitations on the members certificate for a specified or indefinite period.

In making these orders, a panel may specify criteria to be satisfied before such terms, conditions and limitations are removed.

Key Questions Concerning Quality of Care Provisions

Patients/clients should expect and receive high quality care from regulated health professionals. If the *Regulated Health Professions Act* (RHPA) is to be effective in maintaining and promoting such quality of care it must provide regulatory Colleges with sufficient provisions for implementing this objective. Based on your understanding of the RHPA's current provisions and your own experience, please answer the following questions.

2.1

Does the RHPA include provisions that are strong enough and specific enough to provide regulatory Colleges with the tools they need to ensure that their members provide high quality care? If not, what additional provisions need to be included in the Act?

2.2

Which RHPA provisions have empowered Colleges to maintain and promote quality care? Which if any provisions are barriers to doing so? What changes or improvements would you suggest?

2.3

In practice, have the Colleges been able to implement RHPA provisions for the maintenance and promotion of quality care? If not, what difficulties have they encountered?

2.4

Have Colleges done a good job implementing RHPA provisions for the maintenance and promotion of quality care? If so, what kinds of initiatives or models of practice have been particularly effective? If not, what general improvements in implementation do you suggest?

Supplementary Questions

You do not have to answer all or any of the following specific questions. They are provided here mainly to stimulate your thoughts in responding to the above key questions.

2.a.

The RHPA requires each College to establish a program to assure the quality of practice of the profession and to promote continuing competence among its members. Is this requirement of Colleges sufficient to promote quality care? Do Colleges need additional mechanisms to supplement Quality Assurance programs in order to maintain and promote quality care?

2.b.

Should detailed Quality Assurance program requirements be specified in the RHPA, in regulations, in by-laws, or as part of each profession-specific Act?

2.c.

Should standards of practice be included in the legislation? Why or why not?

2.d.

Are Quality Assurance program assessors able to access all workplaces? If not, what barriers exist and what suggestions do you have for improvements?

SECTION III - ACCOUNTABILITY

About This Section

This section deals with the legal obligations of Colleges and their members to serve and protect the public interests and be accountable to individual patients, clients and the public at large. The Regulated Health Professions Act contains many rules that deal with accountability, but we have chosen to highlight those that are of special importance to the public.

Section Contents

- Structure of College Councils
- Council Responsibilities and Powers
- Patient Relations Programs
- College Registers
- Complaints and Discipline Process
- Public Disclosure Provisions
- The Advisory Council's Composition
- Key Questions Concerning Accountability
- Supplementary Questions

Structure of College Councils

Each College has a Council that acts as a Board of Directors. Although the composition of these Councils varies, *all* Councils must have public members who are not regulated health professionals. The Act that deals with a specific health profession specifies the number of public and professional members on each College Council, but professional members are always in the majority. The government appoints public members, while the College membership elects professional members.

An *Executive Committee*, which handles matters that require urgent attention between Council meetings, must also have at least one public member. The same rule applies to College committees or panels that deal with member registration, complaints, discipline and fitness to practice.

The public has a right to attend Council meetings. Councils may only make an exception to this rule if there is a very good reason to do so. For example, Council meetings sometimes deal with public security issues or with College members who are involved in criminal or civil proceedings. In these situations, a Council must weigh the public's 'need to know' against the damage that could be caused by disclosing sensitive information. When a Council does decide to close a meeting or part of a meeting to the public, its reasons for doing so must be clearly stated and included in the minutes.

Council Responsibilities and Powers

A College Council's primary responsibility is to govern the profession in the public interest by making sure its members comply with the *Regulated Health Professions Act* (RHPA) and are accountable to the public. The RHPA promotes public accountability by having Colleges report annually to the Minister of Health and by requiring College Councils to include public members.

Council duties include the development and maintenance of standards concerning College membership requirements, scope of practice, quality assurance and professional ethics.

College Councils also have the authority to make 'regulations' under their own profession-specific Act.¹¹ Regulations are usually written after a law has been passed by the Ontario Legislature. They are separate from an Act, but have the same legal force as the Act itself. The Minister of Health must review proposed College regulations. College Councils can make over 15 different types of regulations. From the public's point of view, some of the more important regulations are those that:

- relate to promotion or advertising by members;
- define professional misconduct;
- define conflict of interest;
- govern or prohibit the delegation of controlled acts by or to members; and
- require members to keep specific records relating to their practice.

¹¹ Cabinet must pass proposed College regulations. These regulations cannot be put into effect until they are approved by the Cabinet and signed by the Lieutenant Governor of Ontario.

Patient Relations Programs

The *Regulated Health Professions Act* requires each College to have a patient relations program that promotes measures for preventing or dealing with sexual abuse of patients/clients including funding for therapy and counselling. The purpose of these programs is to educate College members and inform the public about what is, or is not, appropriate professional conduct. These programs are another important mechanism for providing public accountability.

College Registers

Each College must keep a Register that contains information about each of its members. For example, the Register must include information that indicates:

- whether the College has placed any terms, conditions or limitations on the member's certificate of registration;
- whether the member has been found to be incompetent or guilty of professional misconduct and, if so, what action was taken against the member;
- whether the member's certificate of registration has ever been suspended or revoked; and
- whether a *Disciplinary Committee* decision is currently being appealed.

Anyone, including members of the public, can obtain this and other information for the last six years, upon payment of a reasonable fee to cover copying costs, from the College Registrar.¹² Not all information on the Register is accessible to the public. An example of this is information about a finding of incapacity which is no longer publicly accessible once a member's certificate of registration is reinstated.

Complaints & Discipline Process

In Section I, we described the process for handling complaints about a College member's conduct, capability or fitness to practice. Public accountability is an important aspect of the complaints and discipline process. All formal complaints, whether made by a College member, a patient/client or another party must be investigated by a *Complaints Committee* panel.

This panel, which must have at least one public member, reviews all evidence or submissions that support or dispute the complaint.

If the panel decides the complaint is valid, it may refer the matter to another committee for possible disciplinary action.¹³

The College must notify everyone who is directly involved in a complaints process about its decisions, the reasons for such decisions, and their right to appeal to the Health Professions Appeal and Review Board.

Individuals who make a complaint, or are the subject of a complaint, may also appeal to the Board if the matter is not settled within 120 days.

² A Registrar is **not** required to provide a member's business address or telephone number if there is reason to believe this information might threaten the member's safety.

³ If the *Complaints Committee* panel believes the member is mentally or physically incapable of practising, it must refer the matter to the College's *Executive Committee* which can order an incapacity hearing.



Public Disclosure Provisions

Each College must include, in its annual report, a summary of the decisions it reached after conducting discipline hearings. The College must also list the panel's reasons for making such decisions.

Information concerning members found guilty of professional misconduct by a *Discipline Committee* must be included in the College Register. As mentioned above, this information is available to the public.

Information concerning a *complaint* that has not resulted in discipline is not included in the College Register and cannot be published.

As we noted in Section I, some Colleges are now using alternate dispute resolution processes to handle complaints. Alternate Dispute Resolution (ADR) is a process that attempts to resolve disputes to the mutual satisfaction of both parties without resorting to lengthy and expensive reviews or hearings.

Since ADR settlements involve a health care professional and a College, and are private, information about such agreements is not included in the College Register and is not available to the public.

Health Professions Regulatory Advisory Council

In concluding this section, it is important to note that responsibility for reviewing the impact and effectiveness of the *Regulated Health Professions Act* was assigned to the *Health Professions Regulatory Advisory Council* (Advisory Council) in a request from the Minister of Health.

The Advisory Council is an impartial arms' length agency of the Ministry of Health whose government-appointed public members cannot be public servants, Crown employees or past or present members of a regulatory College or College Council. The Advisory Council's statutory responsibilities are outlined in this document's Overview of the *Regulated Health Professions Act*.

Key Questions Concerning Accountability

Health professionals must be accountable to their patients/clients and the public. Colleges also have an obligation to serve the public interests and are accountable to the public for this responsibility.

Effectiveness of the Regulated Health Professions Act (RHPA) in maintaining and promoting accountability among health professionals requires that the RHPA set out sufficient provisions for accountability and that such provisions are implemented optimally by the regulatory Colleges.

Based on your understanding of RHPA provisions concerning accountability and your own experience, please answer the following questions:

3.1

Does the RHPA include provisions that are strong enough and specific enough to ensure accountability of Colleges to the public and accountability of health professionals to their patients/clients and the public? If not, what additional provisions need to be included in the Act?

3.2

Which RHPA provisions have helped to maintain and promote the accountability of Colleges and health professionals to their patients/clients and the public? Which provisions, if any, are barriers to doing so? What improvements are needed?

3.3

In practice, have the Colleges been able to implement the provisions of the RHPA for the maintenance and promotion of accountability of health professionals to their patients/clients and the public? If not, what difficulties have been encountered?

3.4

Have the Colleges done a good job of implementing RHPA provisions for maintaining and promoting the accountability of health professionals to their patients/clients and the public? If so, what kinds of initiatives or models of practice do you think have been particularly effective? If not, what general improvements in implementation are needed?

3.5

What is the appropriate mix of public members and health professionals on College Councils? Should the majority of College Council members continue to be health professionals elected by their colleagues, or should greater regulatory control be placed in the hands of public members appointed by the Cabinet?

Supplementary Questions

You do not have to answer all or any of the following specific questions. They are provided here mainly to stimulate your thoughts in responding to the above key questions.

3.a.

Are there sufficient numbers of public members on College Councils to effectively represent the public's interest?

3.b.

Are there sufficient numbers of public members on *Complaints and Discipline Committees* to effectively represent the public's interest?

3.c.

Are public members sufficiently equipped to represent the interests of the public (e.g., orientation, training, financial support)? If not, what approaches could be used to better equip public members for their role?

3.d.

Should College Councils contain representatives from different regulated health professions?

3.e.

Is the publicly accessible information in College registers sufficient to protect the public from harm? For example, should the public have access to information about ADR settlements and orders for remedial training from the *Quality Assurance Committee*?

3.f.

Should the College's *Executive Committee's* powers and procedures be clearly defined in the legislation?

3.g.

Do College members understand the public interest mandate of the College?

3.h.

Are professions being regulated in the public interest or in the interest of their members?

3.i.

Should additional mechanisms be put into place to maintain/promote the ongoing effectiveness of self-regulation of health professions (e.g., continued statutory evaluations by the Advisory Council, more defined Ministry of Health functions, a 10-year review)?

3.j.

Are the powers of the Minister insufficient, adequate or excessive?

3.k.

Has public input to the regulatory system through the Advisory Council been sufficient, adequate or excessive?

SECTION IV - EFFICIENCY

About this Section

Throughout history, humans have struggled to become more efficient—to do more in less time and with less effort. In 1605, a French mathematician named Blaise Pascal invented a cog-driven mechanical device that used wheels numbered from zero to nine to add and subtract. He called it a 'computer'. In today's world, the electronic 'offspring' of Pascal's mechanical 'computer' have increased the efficiency of many tasks and functions in society. We are able to do more things in less time, with less effort and fewer resources. But to achieve what ends? To preserve which values?

The challenge that now faces Ontario's Health Professions Regulatory Colleges is to operate in an efficient and timely way, without compromising effectiveness, flexibility, and fairness. In this section, we discuss some of the more resource intensive and time-consuming requirements of the Regulated Health Professions Act and pose questions about their impact on regulatory Colleges, health professionals, patients/clients and the public.

Section Contents

- Regulatory and Administrative Requirements
- Complaints and Discipline Requirements
- Quality Assurance Program
- Patient Relations Program
- Key Questions Concerning Efficiency
- Supplementary Questions

Regulatory and Administrative Requirements

Responsibilities such as developing registration, ethical and quality assurance standards consume much of a College's time. In addition, Colleges also:

- conduct administrative, financial and internal affairs;
- develop by-laws and regulations;
- communicate with their members;
- manage large numbers of committees;
- prepare committee reports and recommendations; and
- prepare annual reports and College publications.

All of these tasks place considerable demands on College resources. However, the complaints and discipline process and the quality assurance and patient relations programs are among the most resource-intensive College requirements. These are dealt with in greater detail below.

Complaints and Discipline Requirements

The *Regulated Health Professions Act* says Complaints Committees must settle formal complaints about the conduct of their members within 120 days.

During this time, Colleges must:

- give the member notice and 30 days to prepare a written response;
- appoint a complaints committee panel;
- investigate the complaint;
- review material provided by the member, the person who made the complaint and any other evidence that has a bearing on the case;
- consider possible courses of action; and
- refer the matter to another panel or committee if further action is indicated.

The length of time required to settle complaints is also a public concern. Complainants have a right to ask the *Health Professions Appeal and Review Board* to intervene if a College does not dispose of a complaint within 120 days.

As we noted in Section I, some Colleges are now using alternate dispute resolution processes to handle complaints. Alternate Dispute Resolution (ADR) is a process that attempts to resolve disputes, to the satisfaction of both parties, without resorting to lengthy and expensive reviews or hearings. Although alternate dispute resolution may be efficient, private settlements between a complainant and a health care professional are not subject to review or public scrutiny. In some people's minds, this raises questions about efficiency versus accountability.

Quality Assurance Program

In Section II, we discussed the *Regulated Health Professions Act* requirement that Colleges develop quality assurance programs. We also described the process for assessing members' conduct and standards of practice. The process leading up to the application of corrective measures can be lengthy, time consuming and expensive.

Quality assurance programs are relatively new in the health care field and there are widely different opinions about how to measure or ensure quality care and determine what College resources should go into these programs. Quality assurance programs also put demands on health care professionals. They must take time away from their practice to upgrade their skills and knowledge and take part in College assessments designed to measure their competence and ability to provide high quality care.

Patient Relations Program

One of the main objectives of the provisions of the *Regulated Health Professions Act* is to eradicate sexual abuse by health professionals. Patient relations programs, which all Colleges are required to develop and maintain, are one mechanism for doing so. Their purpose is to educate regulated health professionals and inform the public about what is and is not appropriate professional conduct. Providing information to health professionals and the public can, potentially, demand a lot of College resources.

The effectiveness of these programs is currently being evaluated by the *Health Professions Regulatory Advisory Council*. These evaluations place extra demands on College staff and health professionals alike.

Key Questions Concerning Efficiency

Efficiency is about minimizing the time and effort necessary to achieve the desired outcomes. In the case of the *Regulated Health Professions Act*, these outcomes include protection of the public from harm, provision of high quality care, promotion of accountability and preservation of principles such as flexibility and fairness. Based on your understanding of the time and effort needed to achieve these outcomes, please answer the following questions.

4.1

Have any of the *Regulated Health Professions Act* (RHPA) requirements been cumbersome or placed excessive demands on Colleges? Could these requirements be simplified or streamlined without compromising the effectiveness of the RHPA?

4.2

Have the RHPA provisions placed excessive demands on patients/clients? If so, how can the RHPA better accommodate their needs and requirements?

4.3

Have Colleges been able to make the best use of available resources to achieve the RHPA's desired outcomes? If not, why not?

4.4

Could collaboration between and among Colleges increase their efficiency? Are there any barriers to Colleges sharing resources? If so, what are they?

4.5

Could efficiencies in the system be gained by merging some of the Colleges? If so, what criteria should be used to determine whether mergers should be considered?

4.6

Could less costly mechanisms or approaches be used to achieve the RHPA's desired outcomes? If so, what are they?

4.7

Has implementation of the RHPA allowed the Minister of Health to make timely decisions regarding new legislation or legislative amendments? What improvements would you suggest?

Supplementary Questions

You do not have to answer all or any of the following specific questions. They are provided here mainly to stimulate your thoughts in responding to the above key questions.

4.a.

Are the required timelines for College decisions and appeals feasible?

4.b.

Should Colleges whose members have little or no patient/client contact be exempt from having Patient Relations programs?

4.c.

Are there barriers to the efficient operation of College Councils? If so, what are they?

4.d.

Do RHPA provisions regarding public appointments (e.g., quorums, statutory minimums) allow for efficient operation of the College Council?

4.e.

Are the registration fees of Colleges insufficient, adequate or excessive?

4.f.

Have provisions of the RHPA and the College-specific Acts been amended with relative ease when necessary?

SECTION V - FLEXIBILITY

About This Section

Keeping abreast of new technologies, diagnostic procedures, and methods of treatment has become an ever-increasing challenge for health professionals. During the past decade, Ontario's population has become better educated, more discriminating, and more involved in their own health care.

There have been shifts in the relationships among health care professions, as well as changes in the distribution of health care professionals and the way in which services are provided. Caring for people from different cultures and with widely different beliefs, values and expectations, requires sensitivity, understanding and flexibility.

This section deals with such realities, and the regulatory system's readiness to adapt to changing needs and circumstances.

Section Contents

- Minister's Latitude to Direct Change – What can the Minister do?
- The Public's Ability to Influence Change
- College's Latitude in Making Regulations and By-laws
- Flexibility to Exempt Individuals from Performing Controlled Acts
- Key Questions Concerning Flexibility
- Supplementary Questions

Minister's Latitude to Direct Change – What Can the Minister Do?

Provisions for adapting to changing times and circumstances are summarized in Section 5 (d) of the *Regulated Health Professions Act* (RHPPA), which reads as follows:

"The Minister may require a (College) Council to do anything that, in the opinion of the Minister, is necessary or advisable to carry out the intent of this Act, the health professions Acts or the *Drug and Pharmacies Regulation Act*."

This section of the *Regulated Health Professions Act* gives the Minister of Health considerable latitude to respond to changing needs and circumstances. Under the current provisions of the Act, the Minister could, for example:

- require Colleges to share administrative and other resources; or
- broaden the scope of patient relations programs (which now deal predominantly with sexual abuse).

However, there are many other changes that, if necessary or desirable to accommodate evolving needs, would require legislative amendments, which involves a time-consuming process. Such changes could:

- limit or expand a regulated health profession's scope of practice;
- expand the number of "controlled acts" that can be performed by health professionals or limit their ability to delegate such acts to others;
- regulate a new profession or deregulate an existing one; or
- alter current exemptions under the Act.

The Public's Ability to Influence Change

The Minister also has an obligation, on request from a College Council or a person, to refer any matter concerning the regulation of health professions to the *Health Professions Regulatory Advisory Council* (Advisory Council).

The Advisory Council's primary responsibility is to conduct public reviews, on the Minister's behalf, concerning proposed changes to the laws and regulations that govern regulated health professions. Anyone, including members of the public, can ask the Minister to refer such matters to the Advisory Council. Members of the public can also participate in Advisory Council reviews concerning the regulation of health professions.

The fundamental objective in this review process is to determine whether regulation of the profession is necessary and in the public interest. The Advisory Council uses nine criteria for making this determination. These criteria are applied in the following questions:

1. Is a substantial percentage of the profession's membership engaged in activities that are under the Minister of Health's jurisdiction and have, as their primary objective, the promotion or restoration of health?
2. Do the services provided by the profession pose a substantial risk of physical, emotional or mental harm to their patients/clients?
3. Do members of the profession work in settings where there is no effective monitoring or supervision of their performance?
4. Is the profession unlikely to be regulated under some other regulatory mechanism?
5. Must members of the profession rely upon a distinctive, systematic body of knowledge when assessing or treating their patients/clients?
6. Are members of the profession required to successfully complete a post-secondary program offered by a recognized Canadian educational institution before being admitted to their profession?
7. Has the profession's leadership demonstrated its ability and desire to place the public's interest ahead of its own interests?
8. Is there sufficient member support for self-regulation that widespread compliance with legislation is likely?
9. Does the profession have enough qualified and committed members to staff all committees of a governing body and maintain a separate professional association?

This process ensures fairness by giving all interested parties, including members of the public, an opportunity to state their views. The Advisory Council may also consult experts who have special knowledge about the application and the profession seeking regulation. Regulatory review proceedings are open to the public and, when necessary, make special accommodation for individuals with special needs.

In making its recommendations to the Minister, the Advisory Council relies exclusively on information that is a matter of public record. The Advisory Council's role is strictly advisory. Decisions are made by the Minister.

College's Latitude in Making Regulations and By-Laws

If the *Regulated Health Professions Act* is to remain relevant, it must be flexible enough to respond to the changing needs of consumers and health professionals. For this reason, regulatory Colleges have the authority to make regulations that define or re-define the responsibilities, obligations and standards of practice of their members. For example, a College might choose to enact regulations which:

- set different standards for professionals seeking College membership;
- introduce new measures for ensuring compliance with quality assurance programs; or
- define conflict of interest for members of the profession.

College Councils also have the flexibility to modify or streamline their internal and administrative procedures by passing by-laws that, for example, set fees and election processes or change the composition and duties of some committees.¹⁰

Flexibility to Exempt Individuals from Performing Controlled Acts

The *Regulated Health Professions Act* (RHPA) does not apply to aboriginal healers and midwives who are providing traditional healing or midwifery services to members of an aboriginal community. Individuals who counsel others about emotional, social, educational or spiritual matters, or treat others by prayer or spiritual means, are also exempt from "controlled acts" provisions.

Key Questions Concerning Flexibility

Ontario is a diverse and dynamic society. For the RHPA to remain relevant, it must be flexible enough to respond to diversity in the current environment as well as to the evolving needs of consumers and of health professionals in a changing environment. The following questions seek input on whether implementation of the RHPA has been responsive to current and emerging needs.

5.1

Have provisions in and implementation of the RHPA been flexible enough to respond to the evolving practices of regulated health professions, such as innovations in practice and technological advancements?

5.2

Have provisions in and implementation of the RHPA been flexible enough to respond to changing practice environments which change supervisory arrangements, required expertise, and opportunities for consultation and collaboration with peers?

5.3

Have provisions in and implementation of the RHPA been flexible enough to respond to changing consumer expectations and needs?

¹⁰ Regulations are subject to review by the Minister of Health and do not come into effect until they are approved by the government.
¹¹ In February 1999, Bill 25, the *Red Tape Reduction Act* gave Colleges greater flexibility by increasing the scope of their by-law making powers.

Supplementary Questions

You do not have to answer the following specific questions. They are provided here mainly to stimulate your thoughts in responding to the above key questions.

5.a.

In practice can regulation of new professions and deregulation of existing health professions be initiated and carried out with ease?

5.b.

Does the shift toward more community-based care have implications for the regulatory system?

SECTION VI – FAIRNESS

About This Section

Much of this publication has been devoted to describing *Regulated Health Professions Act* (RHPA) provisions for protecting the public from harm, promoting quality care and holding professionals accountable.

This section deals with the equally important need to ensure that the RHPA is implemented in a way that is just, impartial, equitable and accessible to *all* concerned parties, including those who govern and provide health care services.

It speaks to accessibility, including the right of individuals to obtain services from the health professions of their choice. It speaks to the public's right to complain about the conduct of health professionals and the right of College members to defend themselves and receive a fair hearing.

It talks about equality through RHPA provisions that make all regulated health professions adhere to the same corporate structure, purposes, procedures and public interest principles.

It deals with equity and the expectation that the interests/rights of those who receive as well as those who provide health care services will be respected and that they will be treated with dignity.

Last, but not least, this section speaks to the need to balance the rights and powers of Colleges, health professionals and members of the public.

Section Contents

- Applications for College Membership
- Complaints Procedures
- Mandatory Reporting of Sexual Abuse
- Health Professions Appeal and Review Board Hearings
- Appeals to the Court
- Key Questions Concerning Fairness
- Supplementary Questions

Applications for College Membership

In Ontario, any health care provider who wants to call him or herself a regulated professional must first become a member of the College that governs his or her profession. In earlier sections of this publication, we described the process for doing so and for evaluating a person's skills, knowledge and experience.

The *Regulated Health Professions Act* provides two ways of making sure this procedure is fair to applicants and that Colleges will not have to issue certificates of registration to unqualified individuals.

If a College Registrar asks the College's Registration Committee to review an application, the individual making the application has the right to make written submissions to the committee.

If the committee, after reviewing the application, a) refuses to issue a certificate to the applicant, b) requires the applicant to pass certain exams or successfully complete additional training, or c) puts specific limitations on the applicant's certificate of registration, the applicant may appeal the committee's decision to the *Health Professions Appeal and Review Board*

In these situations, the Board can either review written copies of the individual's application and the *Registration Committee's* decision or conduct a full hearing involving sworn testimony and cross-examination of witnesses. The applicant has a right to decide which process the Board uses.

Complaints Procedures

The way in which a College handles complaints about its members is one of the most important tests of its ability to regulate a profession and to balance the rights of the public against those of its members.

In Ontario, everyone has a legal right to make a complaint about the conduct of a regulated health professional and to have their complaint investigated by the College to which the professional belongs. Most complaints come from patients/clients or family members, but a professional's colleagues also have a right to register complaints.¹⁶

Colleges are required to investigate *all* complaints, including those made by people who were not directly involved. There is no fee for registering a complaint and there is no time limit for doing so.

The first step in the process is to submit a complaint to a College Registrar. Complaints must either be made in writing or in some other recorded form, such as video or audiotape.

Although they are not required to do so, many Colleges are willing to assist members of the public to prepare or clarify their complaints.

A three-member panel appointed by the College's *Complaints Committee* is usually responsible for handling complaints, although the full committee is sometimes involved in such reviews. These panels, and the *Complaints Committees* that appoint them, must include at least one public member.

When a complaint is registered, the College Registrar must give the member notice of the complaint and 30 days to prepare a written response to the allegation. *Complaints Committee* panels must also make a reasonable effort to consider any other records or documents that may have a bearing on the matter.

Complainants and members do not have a right to request a meeting with *Complaints Committee* panel members or to attend panel meetings. However, they may be invited to appear before the panel or even to meet together in an effort to resolve the matter.

The panel has 120 days in which to complete its investigation and give written notice of its decision to the member and the person who made the complaint.

If the panel dismisses the complaint, takes only minor action, or refers it to the College's *Quality Assurance Committee* it must also give the complainant and respondent a written copy of its reasons for doing so. The panel must also tell the member and the person making the complaint whether they have the right to appeal its decision to the *Health Professions Appeal and Review Board*.

Neither the member nor the person making the complaint can appeal to the Board if a panel decides to refer the matter to the College's *Discipline Committee* or its *Executive Committee* for further consideration.

Mandatory Reporting of Sexual Abuse

Under the provisions of the *RHPA*, members of regulated health professions have a legal obligation to notify their College if they have reason to believe a regulated health professional has sexually abused a patient/client. The College must investigate all such allegations. This provides for a reporting mechanism in cases where victims of sexual abuse may be afraid or unable to complain on their own behalf. This is especially important in the case of people who are vulnerable or disadvantaged (e.g., persons with developmental disabilities).

Victims of sexual abuse by a College member may also be entitled to counselling and therapy and all Colleges must provide funding for this purpose. Some Colleges may also require members who committed sexual offences to repay this money.

Health Professions Appeal and Review Board Hearings

If it is their desire to do so, complainants or College members must request a Board review within thirty days of receiving notice of a complaints panel decision. The Board can extend this time limit for an additional 60 days if it is satisfied that no person will be prejudiced. The Board can also refuse to conduct a review if it considers the request is unworthy of serious attention.

When the Board agrees to review a complaints panel decision, the College Registrar must provide it with a record of the investigation and the documents and other evidence on which the panel based its decision. The Board must then disclose this information to the two involved parties. However, it can refuse to provide some of this information if it is of the opinion that:

- matters of public security may be involved;
- disclosure of the information could undermine the integrity of the complaint investigation and review process;
- the information is of such a nature that the desirability of not disclosing it outweighs the principle that disclosure should be made;
- that disclosure could prejudice a person involved in a criminal proceeding or civil suit; or
- that disclosure might jeopardize the safety of any person.

The Board may require a College representative to attend review hearings and answer questions, but neither the College representative nor other parties to the hearing (i.e., the complainant or the member) may question one another. The RHPA also allows someone else to represent a complainant at a Board hearing if the complainant dies or becomes incapacitated before the hearing gets underway. This protects the public's interest by ensuring that serious complaints are not withdrawn in these unfortunate situations.

When a review is completed, the Board may do one of the following things:

1. uphold or confirm all or part of a Complaints Committee decision;
2. make recommendations to the Complaints Committee; or
3. require the Complaints Committee to do anything the committee or panel may do under the RHPA.

The third option means, in effect, that the Board can:

- refer an allegation of professional misconduct or incompetence to the College's *Discipline Committee*;
- refer the member to the College's *Executive Committee* for incapacity proceedings; or
- refer the matter to the College's *Quality Assurance Committee* if the complaint is about minor sexual abuse.

The Board must give a written summary of its decisions and reasons for those decisions to both concerned parties and the College's *Complaints Committee*.

Appeals to the Court

The following parties may appeal to the divisional court:

1. a party to a proceeding before the Health Professions Appeal and Review Board concerning a registration review or hearing;
2. a party to a proceeding before a panel of the Discipline Committee; or
3. a party to a proceeding before a panel of the Fitness to Practice Committee (other than an application for reinstatement).

Key Questions Concerning Fairness

Under the provisions of the *Regulated Health Professions Act* (RHPA), regulatory Colleges and the *Health Professions Appeal and Review Board* are given the power to ensure that desired outcomes are achieved. These outcomes include protection from harm, the provision of high quality care and professional accountability. It is important that these powers are exercised in a way that ensures fairness and respect for the rights and interests of all parties. Based on your understanding of these provisions and your own experience, please answer the following questions.

6.1

Have provisions in and implementation of the RHPA been responsive to the barriers faced by diverse and disadvantaged groups in Ontario?

6.2

Have Colleges implemented the requirements of the RHPA in ways that fully respect the rights and interests of potential members, members, complainants and respondents? If not, why not?

6.3

Are the required timeframes for College decisions/actions fair to all concerned parties?

6.4

Does the RHPA provide adequate procedural safeguards, such as checks, balances and appeal provisions?

6.5

Is the process for dealing with complaints sufficiently accessible to the public?

6.6

Are privacy provisions for complainants and respondents (College members) adequate?

6.7

From the point of view of fairness for all, are the powers of the Colleges insufficient, adequate or excessive?

6.8

From the point of view of fairness for all, are the powers of the *Health Professions Appeal and Review Board* insufficient, adequate or excessive?

6.9

Have provisions in and implementation of the RHPA provided the public with access to health professions of choice?

6.10

Has the fact that the RHPA holds all Colleges to the same corporate objectives, public interest standards and governing structures promoted equality among the regulated health professions?

Supplementary Questions

You do not have to answer all or any of the following specific questions. They are provided here mainly to stimulate your thoughts in responding to the above key questions.

6.a.

Does the Complaints and Discipline process meet the needs of both complainants and respondents?

6.b.

Is the average wait between the time of a complaint being made and the time of resolution of the complaint too long?

6.c.

Is the average wait from the time of appeal and the *Health Professions Appeal and Review Board* decision too long?

6.d.

Are the appeal mechanisms outlined in the RHPA insufficient, sufficient or excessive?

6.e.

Does the RHPA strike an appropriate balance between the rights/interests of individual patients/clients and the rights/interests of professional members

6.f.

Should the RHPA clearly define criteria for frivolous and vexatious complaints?

6.g.

Should complainants be given party status at discipline hearings?

6.h.

Is it desirable that third parties be allowed, on behalf of complainants, to bring a complaint in cases where complainants are unable or unwilling to come forward?

6.i.

In addition to the fund for therapy for victims of sexual abuse, should there be provisions in the RHPA for compensation of those who have been harmed by a regulated health professional in the course of receiving health care?

6.j.

Should there be a clearly defined appeal route for decisions of the Executive Committee?

6.k.

Does the RHPA strike an appropriate balance between the powers of the Colleges and the rights/interests of complainants?

6.l.

Does the RHPA strike an appropriate balance between the powers of the Colleges and the rights/interests of professional members?

6.m.

Does the RHPA strike an appropriate balance between the powers of the Colleges pursuant to quality assurance and the rights/interests of health professionals?

Appendix 1 — Review Referral Terms of Reference

Introduction

The *Health Professions Regulatory Advisory Council* (Advisory Council) has been asked by the Minister of Health to undertake a review of the *Regulated Health Professions Act* (RHPA) and related profession-specific Acts five years after enactment. Specifically, the Advisory Council was asked to review the effectiveness and the impact of the RHPA. This referral is called the Review Referral.

In addition to the Minister's initial referral, the Advisory Council has subsequently received two separate ministerial referrals, which were requested by two members of the public (M. Arndt and B. Salvador). While the additional referrals raise different issues, both are concerned with governance issues including the composition of Councils and committees of the Colleges. In both cases, the Minister asked the Advisory Council to consider the issues raised in the context of the Review Referral.

Rationale and History

The Advisory Council initially conducted a number of workshops with the Colleges to solicit input into the nature of the Review. Subsequently, legal input was obtained with respect to a possible framework for the Review. As a result, the Advisory Council has taken the position that the RHPA and the *Health Professions Legislation Review* (HPLR) will be used as complementary sources for objective standards in the Review. (The HPLR was the lengthy process that gave rise to the RHPA; the HPLR document¹ outlines the original policy rationale of the RHPA.)

The Advisory Council has previously recognized that the RHPA has six underlying legislative objectives which further the public interest. These objectives are: protection from harm, promotion of high quality of care, accountability of the professions, access to health care professions of choice, equality among the professions, and equitable treatment of individual patients/clients and professionals. The HPLR included most of these objectives but mentioned other goals of the regulatory scheme as well. Prominent among these, in the Advisory Council's view, are the following three: a balance of power between the regulatory bodies, the patients/clients and the professionals; an efficient and cost-effective system; and a system that, through policy development mechanisms, would be flexible enough to maintain its relevance and usefulness. Thus, one can identify at least nine concepts that can serve as guide-posts for the present Review: protection from harm, quality of care, accountability, accessibility, equality, equity, balance of power, efficiency and flexibility.

¹ Schwartz, Alan (Coordinator). *Striking a New Balance: A Blueprint For the Regulation of Ontario's Health Professions*. Recommendations of the Health Professions Legislation Review. Toronto: Government of Ontario, 1989.

In the context of reviewing the RHPA's effectiveness, the Advisory Council has chosen to focus on the first three of these concepts – protection, quality and accountability. This view follows from a lead in the RHPA itself. Section 6 of the Act outlines the Advisory Council's obligations in reporting on effectiveness in the regulatory system.

The Advisory Council is to report on the effectiveness of specific complaints and discipline processes as well as the quality assurance and patient-relations programs.¹⁹

In the Advisory Council's view, these statutory effectiveness directives deal most directly with the concepts of protection, quality, and accountability.

It is noted that the Minister asked that both effectiveness and impact be reviewed. In striving to effectively achieve protection, quality and accountability, the Advisory Council recognizes that there could be impacts in the form of financial costs, limited ability to respond to changing professional practices and consumer expectations, and possible encroachment on the interests/rights of various parties under the Act. Thus, the impact of the RHPA will be examined to determine whether these impacts have been minimized, that is, whether efficiency, flexibility and fairness have been achieved. The word "fairness" here embraces the concepts of accessibility, equality, equity and balance of power.

Scope of the Review

Therefore, the Advisory Council will determine whether the RHPA has generated a regulatory system that is effective, efficient, flexible and fair. Further, the Advisory Council will determine the extent to which these achievements are appropriately balanced in relation to each other. Finally, the Advisory Council will advise the Minister accordingly with recommendations for refinement of the regulatory system and amendments to the RHPA.

As mentioned above, the effectiveness of the RHPA will be examined specifically against the legislative objectives of protection from harm, quality of care and accountability of health professionals. Achievement of these objectives is taken as the primary measure of effectiveness. "Achievement" will be determined through input from stakeholders on 1) the extent to which provisions of the RHPA are logically linked to each of these three public interest objectives; 2) the extent to which the regulatory Colleges have been able to implement these provisions of the RHPA, and 3) the extent to which they have implemented the provisions optimally.

The efficiency of the regulatory system will be examined to determine whether the desired objectives of the RHPA are being achieved through reasonable use of time and resources, and whether the administrative burden of regulation can be streamlined without detriment to either the effectiveness, flexibility or fairness of the system.

As the health care system evolves, through technological advancements for example, the flexibility of the RHPA to address changes in the roles played by individual health professions and in the way individual professions can be utilized is essential. Therefore, the Advisory Council will examine the ease with which the regulatory system has been able to respond to emerging issues in a timely manner.

In the context of the RHPA, fairness is promoted through sensitivity and respect for the interests and rights of all patients/clients and professionals, as well as through unimpeded access and equality among the participants in the regulatory system. Therefore, fairness in the context of this Review, will include such principles.

Process

A series of general and specific questions related to each of the key concepts under review has been prepared by the Advisory Council. However, written responses to these questions will represent only a portion of the research undertaken by the Advisory Council for this Review Referral. Public hearings, focus groups and prevalence studies are also anticipated. Results from the statutory evaluations of the complaints and discipline, quality assurance and patient-relation programs will also become part of this Review.

On the basis of all this information, which will be put on public record, the Advisory Council will determine the extent to which the system is effective, efficient, flexible and fair.

Finally, the Advisory Council will make a judgement as to whether the system's effectiveness and impacts (efficiency, flexibility and fairness) are appropriately balanced in relation to each other. Such is the notion conveyed by the title of this document, *Weighing the Balance*.

Appendix 2 — Health Regulatory Colleges

College of Audiologists and Speech Language Pathologists of Ontario²⁰

College of Chiropodists of Ontario²¹

College of Chiropractors of Ontario

College of Dental Hygienists of Ontario

College of Dental Technologists of Ontario

College of Denturists of Ontario

College of Dietitians of Ontario

College of Massage Therapists of Ontario

College of Medical Laboratory Technologists of Ontario

College of Medical Radiation Technologists

College of Midwives of Ontario

College of Nurses of Ontario

College of Occupational Therapists of Ontario

College of Opticians of Ontario

College of Optometrists of Ontario

College of Physicians and Surgeons of Ontario

College of Physiotherapists of Ontario

College of Psychologists of Ontario

College of Respiratory Therapists of Ontario

Ontario College of Pharmacists

Royal College of Dental Surgeons of Ontario

²⁰ This College regulates two professions: Audiology and Speech Language Pathology.

²¹ This College also regulates Podiatrists.

Appendix 3 — Controlled Acts

A “controlled act” is any one of the following done with respect to an individual.

1. Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis.
2. Performing a procedure on tissues below the dermis, below the surface of a mucous membrane, in or below the surface of the cornea, or in or below the surface of the teeth, including the scaling of teeth.
3. Moving the joints of the spine beyond the individual’s usual physiological range of motion using a fast, low amplitude thrust.
4. Setting or casting a fracture of a bone or a dislocation of a joint.
5. Administering a substance by injection or inhalation.
6. Putting an instrument, hand or finger
 - beyond the external ear canal
 - beyond the point in the nasal passages where they normally narrow,
 - beyond the larynx,
 - beyond the opening of the urethra,
 - beyond the labia majora,
 - beyond the anal verge, or
 - into an artificial opening into the body.
7. Applying or ordering the application of a form of energy prescribed by the regulations under this Act (i.e. Regulated Health Professions Act).
8. Prescribing, dispensing, selling or compounding a drug as defined in subsection 117 (1) of the Drug and Pharmacies Regulation Act, or supervising the part of a pharmacy where such drugs are kept.
9. Prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers.
10. Prescribing a hearing aid for a hearing impaired person.
11. Fitting or dispensing a dental prosthesis, orthodontic or periodontal appliance or a device used inside the mouth to protect teeth from abnormal functioning.
12. Managing labour or conducting the delivery of a baby.
13. Allergy challenge testing of a kind in which a positive result of the test is a significant allergic response (RHPA, section 27).

Appendix 4 — How to Make a Submission

The purpose of this publication is to obtain your input regarding the effectiveness and impact of the *Regulated Health Professions Act*, which came into force on December 31, 1993. The *Health Professions Regulatory Advisory Council*, which is now conducting a five-year review of the Act, will use this input, together with feedback from public hearings and focus groups in making its recommendations to the Minister of Health.

A series of key and supplementary questions appear at the end of Sections I through VI of this publication. Please do not feel obliged to answer all of these questions in preparing your submission—just those which you would like to comment on. If you have any issues that are not addressed by the questions in this document that you would like to speak to, feel free to do so.

Please indicate whether you are making your submission as an individual or on behalf of an organization. Your name, mailing address and telephone number must be included. Anonymous submissions will not be considered.

All submissions must be made in writing. If you have access to a computer, we would also appreciate receiving a diskette copy in Word, Wordperfect or plain text format. You may also send a second copy as an E-Mail attachment to: info@hprac.org.

All submissions will be posted on the Advisory Council's web site (www.hprac.org). This will give individuals and organizations an opportunity to review all submissions. Submissions will be posted as soon as possible after they have been reviewed by the Advisory Council.

Although information posted on the Internet is technically available to a worldwide audience, your identity and privacy will be protected since *we will not publish the names, addresses or geographic locations of individuals who make submissions*. This restriction is not applicable to Colleges, associations, organizations or other institutional participants whose addresses are readily accessible in the public domain.

Submissions *should not include information about individuals or third parties by name*. To ensure individual and third-party privacy, the Advisory Council reserves the right to delete or amend information that identifies specific health care practitioners, locations or institutions at its sole discretion and without the permission of the submitter.

All submissions must be received the Advisory Council no later than 5:00 p.m. E.S.T. October 29, 1999. A Release Form, which appears on the last page of this publication, must accompany all submissions. Submissions that are not accompanied by a Release Form will not be considered or posted on the Advisory Council's web site.

A copy of this publication is available at your public library.

For additional copies, you may contact:

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Fax: 416-326-1549

E-mail: info@hprac.org

The publication can also be viewed on or downloaded from the Advisory Council's website at www.hprac.org.

Copies of the Regulated Health Professions Act, Procedural Code and profession specific acts can be ordered from:

The Government of Ontario Bookstore

Tel: 416-326-5300 or 1-800-668-9938 toll free

TTY: 1-800-268-7095 toll free

or

POOL Publications Ontario On-Line

@<http://www.gov.on.ca/mbs/english/publications/>

For specific questions about making a submission, you may call:

Tel: 1-888-377-7746 toll free

TTY: 1-800-387-5559

or send an e-mail to: info@hprac.org

Submission Consent and Release Form

Name of Person
Making Submission:

Organization Name:
(if applicable)

Address:

Phone: (including area code)

E-mail: (if applicable)

I understand that my submission will be posted on the Advisory Council's web site along with all other submissions and hereby give consent to such posting.

Please check the appropriate boxes below:

- ☐ I am making a submission as an individual and understand that my name will not be posted on the web site
- ☐ I am making a submission on behalf of an organization and understand that the name of the organization will be posted on the web site.
- ☐ Although this submission represents the views of an organization, the address listed above is that of an individual and so the address should not be posted on the web site

I have read the instructions in Appendix 4 and understand and agree with the protocols governing submissions and their distribution/posting on the Internet.

I understand that the Advisory Council will review and edit submissions if they contain names or identifiers of third parties.

Signature:

Date:

Name (please print):

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